

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

KENNY, et al.

Plaintiffs,

v.

WILSON, et al.

Defendants.

CIVIL ACTION NO. 2:16-2794-CWH

**MOTION TO STAY
PROCEEDINGS ON
DEFENDANTS' MOTIONS
FOR FEES AND EXPENSES**

Plaintiffs respectfully submit this Motion to Stay Proceedings on Defendants' Motions for Fees and Expenses. On March 3, 2017, this Court dismissed Plaintiffs' claims citing a lack of subject-matter jurisdiction. Subsequently, on March 20, 2017, Defendants Cannon, Driggers, and Mullen ("Charleston Police Defendants") filed a Motion for Attorneys' Fees and Expenses. (ECF No. 93.) On March 22, Plaintiffs filed their Notice of Appeal. (ECF No. 95.) On March 27, Defendant Loftis filed a Motion for Attorneys' Fees. (ECF No. 98.) Plaintiffs respectfully request that the Court defer further proceedings until after resolution of the appeal by the Fourth Circuit or, in the alternative, deny Defendants' motions without prejudice. This Court has discretion to defer proceedings and deferral would serve the interests of judicial economy.

This Court has discretion to stay proceedings as part of its inherent power to control its docket. *See Landis v. N. Am. Co.*, 299 U.S. 248, 254–55 (1936) ("The power to stay proceedings is incidental to the power inherent in every court to control disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants."); *Clinton v. Jones*, 520

U.S. 681, 706 (1997) (“The District Court has broad discretion to stay proceedings as an incident to its power to control its own docket.”).

The Federal Rules of Civil Procedure specifically contemplate that a district court may defer ruling on a request for attorneys’ fees and expenses until a pending appeal has been decided. The notes to the 1993 Amendments explain that “[i]f an appeal on the merits of the case is taken, the court may rule on the claim for fees, may defer its ruling on the motion, or may deny the motion without prejudice, directing under subdivision (d)(2)(B) a new period for filing after the appeal has been resolved.” Comments to Fed. R. Civ. P. 54. Deferral of proceedings on a motion for attorneys’ fees is preferable where, as here, the claim for fees stands to be affected by the appellate decision. Comments to Fed. R. Civ. P. 58 (“Particularly if the claim for fees involves substantial issues or is likely to be affected by the appellate decision, the district court may prefer to defer consideration of the claim for fees until the appeal is resolved.”); *see also Reed v. Health & Human Servs.*, 774 F.2d 1270, 1277 (4th Cir. 1985), *rev’d sub nom. on other grounds, Lukhard v. Reed*, 481 U.S. 368 (1987)(“a district court may properly defer ruling [on petition for attorneys’ fees] pending ultimate resolution of the merits, hence determination of the prevailing party question.”)(citations omitted); *CSX Transp., Inc. v. Peirce*, No. 5:05CV202, 2013 WL 5375983, at *3 (N.D.W. Va. Sept. 25, 2013)(unreported) (holding attorneys’ fees, expenses, and bill of costs motion in abeyance pending the resolution of any appeal in the interest of judicial economy). Deferring ruling on a motion for attorneys’ fees until the circuit court resolves the appeal ensures that the court only has to address the petition for attorneys’ fees by the party that ultimately prevails.

For these reasons, Plaintiffs respectfully request the Court grant its Motion to Stay Proceedings.

Alternatively, Plaintiffs, with the Consent of Charleston Police Defendants and Defendant Loftis, request an extension of time to respond to defendants' motions for attorneys' fees, ECF Nos. 93, 98, until May 8, 2017. This amounts to an extension of 34 days to respond to the Charleston Defendants' motion, ECF No. 93, and 28 days to respond to Defendant Loftis' motion, ECF No. 98.

Dated: April 4, 2017

Respectfully submitted,

s/Susan K. Dunn
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

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